IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1645 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGINDAS BHAGVANDAS BAKARIWALA

Versus

HEIRS OF DECD. CHHABILDAS BECHARDAS

Appearance:

MS AS PARIKH on behalf of MR ASHWIN L SHAH for Petitioners.

MR RD PATEL for respondents.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/06/2001

ORAL JUDGEMENT

This Civil Revision Application is filed by the petitioners under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter

shall be referred to as "the Act" for short) against the judgement and decree dtd. 18/9/1980 passed by the District Judge, Surat in Regular Civil Appeal NO.181 of 1979 confirming the judgement and decree dtd. 16/7/1979 passed by the Additional Judge, Small Cause Court, Surat in Small Cause Suit No.1748 of 1975. Thus, the present Civil Revision Application has been filed by the petitioners - original plaintiffs against the two concurrent judgements of the courts below.

2. During the pendency of Civil Revision Application, the respondent died and therefore, his legal heirs and representatives have been brought on record.

3. Today, I have heard Ms. A.S. Parikh learned advocate on behalf of Mr. Ashvin L.Shah for the petitioners. No one has appeared on behalf of respondents.

4. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under Sec.29(2) of the Act. The Supreme Court in the case of Patel Valmik Himatlal & others Versus Patel Mohanlal Muljibhai [1998 (2) GLH 736 = AIR 1998 SC 3325, a while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Versus Saiyd Mohmad Mirasaheb Kadri (AIR 1987 SC 1782), held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record recorded by the courts below, and cannot interfere on the grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below on the basis of no evidence at all, or are perverse. A different interpretation of facts is also not possible merely because another view on the same set of facts may just be possible.

5. Brief facts of the case may in brief be stated. The present petitioners original landlord had filed Regular Civil Suit NO.261 of 1974 in the Court of Civil Judge (S.D), Surat, which subsequently converted into Small Cause Suit N.1748 of 1975 on account of establishment of Small Cause Court at Surat to recover the possession of the suit premises i.e. one room situated on 1st floor of a property bearing No.2305 and 2306 of Ward No.10 of Surat City on the grounds that the plaintiffs reasonably and bona fide required the possession of the suit premises for their personal use and occupation, the defendant has committed breach of the

conditions of tenancy by putting sundry articles in the passage meant for use of other tenants of the suit premises, the defendant is causing nuisance and annoyance to the neighbours of the suit premises, the deft. has constructed a permanent structure without taking consent of the plaintiffs and the defendant is in arrears of rent for a period of more than six months. In short, the plaintiffs filed the suit on all possible grounds. In the said suit, the defendant had filed Written Statement at Ex.10 resisting the suit and denying the averments made by the plaintiffs in the plaint. The defendant had also raised dispute regarding the standard rent of the suit premises and had prayed for fixation of standard rent and prayed for dismissal of the suit.

6. Thereafter, the learned Judge, Small Cause Court, Surat framed issues at Ex.18. and after recording the evidence of the respective parties , hearing the learned advocates for the respective parties and considering the oral as well as documentary evidence on record, the learned Judge, Small Cause Court dismissed the suit. Being aggrieved by the said dismissal order, the plaintiff preferred an appeal being Regular Civil Appeal NO. 181 of 1979 in the Court of learned District Judge, Surat, who after hearing the learned advocates for the respective parties and considering the evidence on record dismissed the said appeal on 18/9/1980. Thus, being aggrieved by and dissatisfied with the aforesaid two concurrent judgement of the courts below, the petitioners - original plaintiffs have preferred this appeal.

7. The learned advocate for the petitioners has mainly argued on the ground of bona fide requirement for consideration of this court. Submitting accordingly, he has drawn my attention towards the issue NO.6 framed by the Small Cause Court, Surat which reads as under;

> (6) Whether the plaintiffs require the suit premises reasonably and bonafide for occupation by themselves or by person for whose benefit the premises are held?

After giving reasons in detail, the learned Small Cause Judge has given the answer in negative.

8. The learned advocate for the petitioners have also read over the finding of the Small Cause Court regarding issue No.6 which has been recorded in para 11 on page No.8 of his judgement, wherein the learned Small Cause Judge held that the present petitioners are having 8 rooms plus other portion in their possession whereas

the defendant is having only one room, and therefore, the Small Court did not believe the case of the plaintiff regarding bona fide requirement. The Small Cause Court had also not believed the case of the plaintiffs that the defendant has acquired alternative suitable accommodation. The said contention was also raised by the original plaintiffs in appeal bearing Regular Civil Appeal NO.181 of 1979. The learned District Judge, elaborating and evaluating the evidence on record more particularly giving reasons in paras 10 on page 5 and 6, came to the conclusion that the present petitioners are having eight rooms over and above the possession of gallery on the first floor admeasuring 9 ft. X 8 ft. which can be used as room if covered up, whereas the defendant is in possession of only one tenanted room. Further the trial court has also not believed the say of the landlord that the tenant has acquired alternative suitable premises and considering the same the civil court has passed the reasoned judgement and decree after hearing the learned advocates for the respective parties and considering the oral as well as documentary evidence on record, which has been rightly confirmed by the lower appellate court. It is not the case of the petitioners that the judgements of the courts below are on the basis of no evidence and the same are perverse. The judgement of the trial court is just, legal and on the basis of evidence on record and in accordance with law and rest of the findings is on the basis of fact and this Court cannot interfere with the concurrent finding of fact even if two views are possible. No other points legal points raised by the learned advocate for the petitioners for consideration of this Court. No error has been committed by the courts below in passing the impugned judgement. In view of the above facts and circumstances of the case, I do not find any substance in this revision application and I do not think it necessary to interfere with the concurrent judgements and decree passed by the courts below.

9. In view of the aforesaid discussion, the Civil Revision Application is rejected. Rule discharged.

(R.P. DHOLAKIA, J.)

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